



## Senate

General Assembly

**File No. 235**

January Session, 2009

Substitute Senate Bill No. 949

*Senate, March 26, 2009*

The Committee on Banks reported through SEN. DUFF of the 25th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

### ***AN ACT CONCERNING MORTGAGE PRACTICES.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

- 1 Section 1. (NEW) (*Effective October 1, 2009*) (a) A person commits
- 2 residential mortgage fraud when, for financial gain and with the intent
- 3 to defraud, such person: (1) Knowingly makes or attempts to make any
- 4 material misstatement, misrepresentation or omission during the
- 5 mortgage lending process with the intention that a mortgage lender,
- 6 mortgage correspondent lender or mortgage broker, as defined in
- 7 section 36a-485 of the general statutes, a borrower or any other person
- 8 that is involved in the mortgage lending process will rely on such
- 9 misstatement, misrepresentation or omission; (2) knowingly uses or
- 10 facilitates the use or attempts to use or facilitate the use of any
- 11 misstatement, misrepresentation or omission during the mortgage
- 12 lending process with the intention that a mortgage lender, mortgage
- 13 correspondent lender, as defined in section 36a-485 of the general
- 14 statutes, borrower or any other person that is involved in the mortgage
- 15 lending process relies on it; (3) receives or attempts to receive proceeds

16 or any other funds in connection with a residential mortgage closing  
17 that the person knew or should have known resulted from an act or  
18 acts constituting residential mortgage fraud; or (4) conspires with or  
19 solicits another to engage in an act or acts constituting residential  
20 mortgage fraud.

21 (b) (1) A person who commits a single act of residential mortgage  
22 fraud is guilty of a class C felony.

23 (2) A person who commits two or more acts of residential mortgage  
24 fraud is guilty of a class B felony.

25 (3) For purposes of this section, (A) "mortgage lending process"  
26 means the process through which an individual seeks or obtains a  
27 residential mortgage loan, including solicitation, application,  
28 origination, negotiation of terms, underwriting, signing, closing and  
29 funding of a residential mortgage loan and services provided incident  
30 to such mortgage loan, including the appraisal of the residential  
31 property; and (B) "residential property" means "residential property"  
32 as defined in section 36a-485 of the general statutes.

33 (c) It shall be sufficient in any prosecution for residential mortgage  
34 fraud to show that the party accused did the act with the intent to  
35 deceive or defraud. It shall be unnecessary to show that any particular  
36 person was harmed financially in the transaction or that the person to  
37 whom the deliberate misstatement, misrepresentation or omission was  
38 made relied upon the misstatement, misrepresentation or omission.  
39 For purposes of this section, the residential mortgage fraud is  
40 committed: (1) In the county in which the residential real property for  
41 which the mortgage loan is being sought is located; (2) in the county in  
42 which any act was performed in furtherance of residential mortgage  
43 fraud; (3) in any county in which any person alleged to have engaged  
44 in an act that constitute residential mortgage fraud had control or  
45 possession of any proceeds of such residential mortgage fraud; (4) if a  
46 closing occurred, in any county in which the closing occurred; or (5) in  
47 any county in which a document containing a deliberate misstatement,  
48 misrepresentation or omission is filed with an official registrar.

49       Sec. 2. (NEW) (*Effective October 1, 2009*) (a) All real and personal  
50 property of every kind used or intended for use in the course of,  
51 derived from or realized through an act of residential mortgage fraud  
52 may be subject to a judgment lien in favor of the state to secure any  
53 fine levied against a person convicted of mortgage fraud. Such  
54 judgment lien shall comply with the provisions of section 52-380a or  
55 52-355a of the general statutes and shall be subordinate to any security  
56 interest in the property recorded prior to the date on which such lien is  
57 recorded.

58       (b) In addition to the penalty prescribed under section 1 of this act,  
59 courts may order restitution to any person that has suffered a financial  
60 loss due to any act or acts constituting residential mortgage fraud.

61       (c) In the absence of fraud, bad faith or malice, a person shall not be  
62 subject to an action for civil liability for filing reports or furnishing  
63 other information regarding suspected residential mortgage fraud  
64 under section 1 of this act to a regulatory or law enforcement agency.

65       Sec. 3. Subsection (a) of section 36a-760 of the general statutes is  
66 repealed and the following is substituted in lieu thereof (*Effective*  
67 *October 1, 2009*):

68       (a) As used in this section and sections 36a-760a to 36a-760j,  
69 inclusive, as amended by this act:

70       (1) "Commissioner" means the Banking Commissioner and, with  
71 respect to any function of the commissioner, includes any person  
72 authorized or designated by the commissioner to carry out that  
73 function;

74       (2) "CHFA loan" means a loan made, insured, purchased, subsidized  
75 or guaranteed by the Connecticut Housing Finance Authority;

76       (3) "FHA loan" means a loan made, insured, purchased, subsidized  
77 or guaranteed by the Federal Housing Administration;

78       (4) "First mortgage loan" has the same meaning as provided in

79 section 36a-485;

80 (5) "Lender" means any person engaged in the business of the  
81 making of mortgage loans who is required to be licensed by the  
82 Department of Banking under chapter 668, or their successors or  
83 assigns, and shall also mean any bank, out-of-state bank, Connecticut  
84 credit union, federal credit union, out-of-state credit union, or an  
85 operating subsidiary of a federal bank or a federally chartered out-of-  
86 state bank where such subsidiary engages in the business of making  
87 mortgage loans, and their successors and assigns, but shall not include  
88 any mortgage broker, as defined in this section, or any mortgage loan  
89 originator, as defined in section 36a-485;

90 (6) "Mortgage broker" means any person, other than a lender, who  
91 (A) for a fee, commission or other valuable consideration, negotiates,  
92 solicits, arranges, places or finds a mortgage, and (B) who is required  
93 to be licensed by the Department of Banking under chapter 668, or  
94 their successors or assigns;

95 (7) "Nonprime home loan" means any loan or extension of credit,  
96 excluding an open-end line of credit, and further excluding a reverse  
97 mortgage transaction, as defined in 12 CFR 226.33, as amended from  
98 time to time:

99 (A) In which the borrower is a natural person;

100 (B) The proceeds of which are to be used primarily for personal  
101 family or household purposes;

102 (C) In which the loan is secured by a mortgage upon any interest in  
103 one-to-four family residential property located in this state which is, or  
104 when the loan is made, intended to be used or occupied by the  
105 borrower as a principal residence;

106 (D) In which the principal amount of the loan does not exceed (i)  
107 four hundred seventeen thousand dollars for a loan originated on or  
108 after July 1, 2008, but before July 1, 2010; and (ii) the then current  
109 conforming loan limit, as established from time to time by the Federal

110 National Mortgage Association, for a loan originated on or after July 1,  
111 2010;

112 (E) Where the loan is not a CHFA loan; and

113 (F) In which the conditions set forth in clauses (i) and (ii) of this  
114 subparagraph apply, subject to any adjustments made pursuant to  
115 clause (iii) of this subparagraph:

116 [(i) The difference between the APR for the loan or extension of  
117 credit and the yield on United States Treasury securities having  
118 comparable periods of maturity is either equal to or greater than (I)  
119 three percentage points, if the loan is a first mortgage loan, or (II) five  
120 percentage points, if the loan is a secondary mortgage loan. For  
121 purposes of such calculation, without regard to whether the loan is  
122 subject to or reportable under the provisions of the federal Home  
123 Mortgage Disclosure Act, 12 USC 2801 et seq., the difference between  
124 the APR and the yield on United States Treasury securities having  
125 comparable periods of maturity shall be determined using the same  
126 procedures and calculation methods applicable to loans that are  
127 subject to the reporting requirement of the federal Home Mortgage  
128 Disclosure Act, as those procedures and calculation methods are  
129 amended from time to time, provided the yield on United States  
130 Treasury securities is determined as of the fifteenth day of the month  
131 prior to the application for the loan.]

132 [(ii)] (i) The difference between the APR for the loan and the  
133 conventional mortgage rate is either equal to or greater than (I) one  
134 and three-quarters percentage points, if the loan is a first mortgage  
135 loan, or (II) three and three-quarters percentage points, if the loan is a  
136 secondary mortgage loan. For purposes of such calculation,  
137 "conventional mortgage rate" means the most recent daily contract  
138 interest rate on commitments for fixed-rate mortgages published by  
139 the board of governors of the federal reserve system in its statistical  
140 release H.15, or any publication that may supersede it, during the  
141 week preceding the week in which the interest rate for the loan is set.

142       (ii) The difference between the APR for the loan or extension of  
143 credit and the average prime offer rate for a comparable transaction, as  
144 of the date disclosed by the lender in accordance with section 49-7a, as  
145 amended by this act, as the date on which the interest rate was set, is  
146 greater than one and one-half percentage points if the loan is a first  
147 mortgage loan or three and one-half percentage points if the loan is a  
148 secondary mortgage loan. For purposes of this subparagraph, "average  
149 prime offer rate" has the meaning as provided in 12 CFR 226.35, as  
150 amended from time to time.

151       (iii) The commissioner shall have the authority, after consideration  
152 of the relevant factors, to increase the percentages set forth in [clauses]  
153 clause (i) [and (ii)] of this subparagraph. The authority of the  
154 commissioner, and any increases or decreases made under this clause,  
155 shall expire on August 31, [2009] 2010. For purposes of this clause, the  
156 relevant factors to be considered by the commissioner shall include,  
157 but not be limited to, the existence and amount of increases in fees or  
158 charges in connection with purchases of mortgages by the Federal  
159 National Mortgage Association or the Federal Home Loan Mortgage  
160 Corporation and increases in fees or charges imposed by mortgage  
161 insurers and the impact, including the magnitude of the impact, that  
162 such increases have had, or will likely have, on APRs for mortgage  
163 loans in this state. When considering such factors, the commissioner  
164 shall focus on those increases that are related to the deterioration in the  
165 housing market and credit conditions. The commissioner may refrain  
166 from increasing such percentages if it appears that lenders are  
167 increasing interest rates or fees in bad faith or if increasing the  
168 percentages would be contrary to the purposes of sections 36a-760 to  
169 36a-760f, inclusive, as amended by this act. No increase authorized by  
170 the commissioner to a particular percentage shall exceed one-quarter  
171 of one percentage point, [, and the total of all increases to a particular  
172 percentage under this clause shall not exceed one-half of one  
173 percentage point.] No increase shall be made unless: (I) The increase is  
174 noticed in the Banking Department Bulletin and the Connecticut Law  
175 Journal, and (II) a public comment period of twenty days is provided.  
176 Any increase made under this clause shall be reduced proportionately

177 when the need for the increase has diminished or no longer exists. The  
178 commissioner, in the exercise of his discretion, may authorize an  
179 increase in the percentages with respect to all loans or just with respect  
180 to a certain class or classes of loans.

181 (8) "Open-end line of credit" means a mortgage extended by a  
182 lender under a plan in which: (A) The lender reasonably contemplates  
183 repeated transactions; (B) the lender may impose a finance charge from  
184 time to time on an outstanding unpaid balance; (C) the amount of  
185 credit that may be extended to the consumer during the term of the  
186 plan, up to any limit set by the lender, is generally made available to  
187 the extent that any outstanding balance is repaid; and (D) none of the  
188 proceeds of the open-end line of credit are used at closing to (i)  
189 purchase the borrower's primary residence, or (ii) refinance a  
190 mortgage loan that had been used by the borrower to purchase the  
191 borrower's primary residence;

192 (9) "Residential property" has the same meaning as provided in  
193 section 36a-485;

194 (10) "Secondary mortgage loan" has the same meaning as provided  
195 in section 36a-485.

196 Sec. 4. Section 36a-760e of the general statutes is repealed and the  
197 following is substituted in lieu thereof (*Effective from passage*):

198 (a) A lender shall not offer a nonprime home loan that contains:

199 (1) A prepayment penalty, except that this prohibition shall not  
200 apply to FHA loans;

201 [(2) A provision that increases the interest rate after default other  
202 than a failure to comply with a provision to maintain an automatic  
203 electronic payment feature where that maintenance provision has been  
204 provided in return for an interest rate reduction and the increase is no  
205 greater than that reduction;]

206 [(3)] (2) A provision requiring a borrower, whether acting

207 individually or on behalf of others similarly situated, to assert any  
208 claim or defense in a nonjudicial forum that: (A) Utilizes principles  
209 which are inconsistent with the law as set forth in the general statutes  
210 or common law; (B) limits any claim or defense the borrower may  
211 have; or (C) is less convenient, more costly or more dilatory for the  
212 resolution of a dispute than a judicial forum established in this state  
213 where the borrower may otherwise properly bring a claim or defense;

214 (3) For a loan with a term of less than seven years, a payment  
215 schedule with regular periodic payments that when aggregated do not  
216 fully amortize the outstanding principal balance, except that this  
217 limitation does not apply to a loan with maturities of less than one  
218 year if the purpose of the loan is a bridge loan, as used in 12 CFR  
219 226.32, as amended from time to time, connected with the acquisition  
220 or construction of a dwelling intended to become the borrower's  
221 principal dwelling;

222 (4) A payment schedule with regular periodic payments that cause  
223 the principal balance to increase;

224 (5) A payment schedule that consolidates more than two periodic  
225 payments and pays them in advance from the proceeds, unless such  
226 payments are required to be escrowed by a governmental agency;

227 (6) Default charges in excess of five per cent of the amount in  
228 default; or

229 (7) A call provision that permits the lender, in its sole discretion, to  
230 accelerate the indebtedness. This prohibition shall not apply when  
231 repayment of the loan is accelerated by bona fide default pursuant to a  
232 due-on-sale clause provision or pursuant to another provision of the  
233 loan agreement unrelated to the payment schedule, including, but not  
234 limited to, bankruptcy or receivership.

235 (b) If a nonprime home loan contains a provision [which] that  
236 violates [subdivision (1), (2) or (3) of] subsection (a) of this section, that  
237 provision shall be void and unenforceable.

238       Sec. 5. Section 36a-489 of the general statutes is amended by adding  
239 subsection (c) as follows (*Effective from passage*):

240       (NEW) (c) Notwithstanding the provisions of this section, the  
241 commissioner may deem an application for a license as a mortgage  
242 lender, mortgage correspondent lender, mortgage broker or mortgage  
243 loan originator abandoned if the applicant fails to respond to any  
244 request for information required under sections 36a-485 to 36a-498a,  
245 inclusive, as amended by this act, or the regulations adopted pursuant  
246 to said sections. The commissioner shall notify the applicant in writing  
247 that if such information is not submitted within sixty days the  
248 application shall be deemed abandoned. An application filing fee paid  
249 prior to the date an application is deemed abandoned pursuant to this  
250 subsection shall not be refunded. Abandonment of an application  
251 pursuant to this subsection shall not preclude the applicant from  
252 submitting a new application for a license under said sections.

253       Sec. 6. Section 36a-498 of the general statutes is amended by adding  
254 subsection (h) as follows (*Effective from passage*):

255       (NEW) (h) No mortgage lender or mortgage correspondent lender  
256 shall include in a mortgage loan a provision that increases the interest  
257 rate after default other than a failure to comply with a provision to  
258 maintain an automatic electronic payment feature where such  
259 maintenance provision has been provided in return for an interest rate  
260 reduction and the increase is no greater than such reduction.

261       Sec. 7. Subsection (b) of section 36a-498a of the general statutes is  
262 repealed and the following is substituted in lieu thereof (*Effective from*  
263 *passage*):

264       (b) (1) No mortgage lender or mortgage correspondent lender  
265 making a secondary mortgage loan may (A) charge, impose or cause to  
266 be paid, directly or indirectly, in connection with any secondary  
267 mortgage loan transaction, prepaid finance charges that exceed in the  
268 aggregate eight per cent of the principal amount of the loan, or (B)  
269 include in the loan agreement, under which prepaid finance charges

270 have been assessed, any provision that permits the mortgage lender or  
271 mortgage correspondent lender to demand payment of the entire loan  
272 balance prior to the scheduled maturity, except that such loan  
273 agreement may contain a provision that permits the mortgage lender  
274 or mortgage correspondent lender to demand payment of the entire  
275 loan balance if any scheduled installment is in default for more than  
276 sixty days or if any condition of default set forth in the mortgage note  
277 exists.

278 (2) Any mortgage lender [,] or mortgage correspondent lender [or  
279 mortgage broker] who fails to comply with the provisions of this  
280 subsection shall be liable to the borrower in an amount equal to the  
281 sum of: (A) The amount by which the total of all prepaid finance  
282 charges exceeds eight per cent of the principal amount of the loan; (B)  
283 eight per cent of the principal amount of the loan or two thousand five  
284 hundred dollars, whichever is less; and (C) the costs incurred by the  
285 borrower in bringing an action under this subsection, including  
286 reasonable attorney's fees, as determined by the court, provided no  
287 such mortgage lender [,] or mortgage correspondent lender [or  
288 mortgage broker] shall be liable for more than the amount specified in  
289 this subsection in a secondary mortgage loan transaction involving  
290 more than one borrower.

291 Sec. 8. Section 36a-746c of the general statutes is repealed and the  
292 following is substituted in lieu thereof (*Effective from passage*):

293 A high cost home loan shall not provide for or include the  
294 following:

295 (1) For a loan with a term of less than seven years, a payment  
296 schedule with regular periodic payments that when aggregated do not  
297 fully amortize the outstanding principal balance, except that this  
298 limitation does not apply to a loan with maturities of less than one  
299 year if the purpose of the loan is a bridge loan, as used in 12 CFR  
300 226.32, as amended from time to time, connected with the acquisition  
301 or construction of a dwelling intended to become the borrower's  
302 principal dwelling;

303 (2) A payment schedule with regular periodic payments that cause  
304 the principal balance to increase;

305 (3) A payment schedule that consolidates more than two periodic  
306 payments and pays them in advance from the proceeds, unless such  
307 payments are required to be escrowed by a governmental agency;

308 [(4) An increase in the interest rate after default or default charges in  
309 excess of five per cent of the amount in default;]

310 [(5)] (4) A refund calculated by a method less favorable than the  
311 actuarial method, as defined by Section 933(d) of the Housing and  
312 Community Development Act of 1992, 15 USC 1615(d), as amended  
313 from time to time, for rebates of interest arising from a loan  
314 acceleration due to default;

315 [(6)] (5) A prepayment penalty;

316 [(7)] (6) A waiver of participation in a class action or a provision  
317 requiring a borrower, whether acting individually or on behalf of  
318 others similarly situated, to assert any claim or defense in a nonjudicial  
319 forum that: (A) Utilizes principles which are inconsistent with the law  
320 as set forth in the general statutes or common law; (B) limits any claim  
321 or defense the borrower may have; or (C) is less convenient, more  
322 costly or more dilatory for the resolution of a dispute than a judicial  
323 forum established in this state where the borrower may otherwise  
324 properly bring a claim or defense; or

325 [(8)] (7) A call provision that permits the lender, in its sole  
326 discretion, to accelerate the indebtedness. This prohibition shall not  
327 apply when repayment of the loan is accelerated by bona fide default,  
328 pursuant to a due-on-sale clause provision, or pursuant to another  
329 provision of the loan agreement unrelated to the payment schedule  
330 including, but not limited to, bankruptcy or receivership.

331 Sec. 9. Section 49-7a of the general statutes is repealed and the  
332 following is substituted in lieu thereof (*Effective October 1, 2009*):

333        (a) No lender shall require a borrower, as a condition of obtaining a  
 334        loan, to sign multiple original notes to evidence such loan.

335        (b) Lenders shall disclose, at the time of closing, the date on which  
 336        the mortgage interest rate was set.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2009</i>	New section
Sec. 2	<i>October 1, 2009</i>	New section
Sec. 3	<i>October 1, 2009</i>	36a-760(a)
Sec. 4	<i>from passage</i>	36a-760e
Sec. 5	<i>from passage</i>	36a-489
Sec. 6	<i>from passage</i>	36a-498
Sec. 7	<i>from passage</i>	36a-498a(b)
Sec. 8	<i>from passage</i>	36a-746c
Sec. 9	<i>October 1, 2009</i>	49-7a

**BA**        *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

### **OFA Fiscal Note**

#### **State Impact:**

Agency Affected	Fund-Effect	FY 10 \$	FY 11 \$
Judicial Dept.	GF - Revenue Gain	Potential Minimal	Potential Minimal
Correction, Dept. Judicial Dept. (Probation)	GF - Cost	Potential	Potential
Banking Dept.	BF - Revenue Gain	Potential Minimal	Potential Minimal

Note: GF=General Fund; BF=Banking Fund

**Municipal Impact:** None

#### **Explanation**

The bill establishes a new crime of residential mortgage fraud and designates any first such offense as a class C felony, punishable by a fine of up to \$10,000 and/or imprisonment for up to 10 years, and any subsequent offenses as a class B felony, punishable by a fine of up to \$15,000 and/or imprisonment for up to 20 years.

Under current law, any person who obtains property by false pretense is subject to the larceny statutes, which categorize any offense involving property with a value greater than \$10,000 as a class B felony.

To the extent that the bill's changes increase the likelihood that offenders would be prosecuted or receive harsher penalties, a potential revenue gain from criminal fines and potential cost for incarceration and/or probation supervision in the community exist. It is anticipated that relatively few fines would be imposed on an annual basis, and, consequently, any revenue gain under the bill is expected to be minimal. On average, it costs the state \$3,736 to supervise an offender on probation in the community as compared to \$44,165 to incarcerate the offender.

The bill also results in a potential minimal revenue gain to the Banking Fund as it allows the commissioner to deem certain mortgage professional license applications abandoned and keep the application fee.

***The Out Years***

The annualized potential cost for incarceration and probation indicated above would continue into the future subject to inflation. The potential revenue gain from criminal fines and certain mortgage professional license applications would remain constant into the future since fine and fee amounts are set by statute.

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**OLR Bill Analysis****sSB 949*****AN ACT CONCERNING MORTGAGE PRACTICES.*****SUMMARY:**

The bill creates the crime of residential mortgage fraud. It provides that a person who commits a single act of residential mortgage fraud is guilty of a class C felony (up to \$10,000 fine, one to 10 years in prison, or both), while a person who commits two or more acts is guilty of a class B felony (up to \$15,000 fine, one to 20 years in prison, or both).

The bill also:

1. changes the definition of, and provisions permitted in, a nonprime loan;
2. allows the commissioner to deem certain mortgage professional license applications abandoned and keep the application fee;
3. applies an existing prohibition against increasing the interest rate after default in certain loans to all residential mortgage loans; and
4. requires lenders to disclose, at the time of closing, the date on which the interest rate was set.

EFFECTIVE DATE: Upon passage, except for the provisions on mortgage fraud, nonprime loans, and closing procedures, which are effective October 1, 2009.

**§§ 1 & 2 — RESIDENTIAL MORTGAGE FRAUD*****Definition***

Under the bill, a person commits residential mortgage fraud when,

for financial gain and with the intent to defraud, the person:

1. knowingly makes or attempts to make any material misstatement, misrepresentation or omission during the mortgage lending process with the intention that a lender or broker, a borrower or any other person that is involved in the mortgage lending process will rely on it;
2. knowingly uses or facilitates the use or attempts to use or facilitate the use of any misstatement, misrepresentation or omission during the mortgage lending process with the intention that a mortgage lender, borrower or any other person that is involved in the mortgage lending process relies on it;
3. receives or attempts to receive proceeds or any other funds in connection with a residential mortgage closing that the person knew or should have known resulted from an act or acts constituting residential mortgage fraud; or
4. conspires with or solicits another to engage in an act or acts constituting residential mortgage fraud.

The bill defines the “mortgage lending process” as the process through which an individual seeks or obtains a residential mortgage loan, including solicitation, application, origination, negotiation of terms, underwriting, signing, closing and funding of a residential mortgage loan and services coinciding with the mortgage loan, including the appraisal of the residential property. It defines residential property as it is defined in the mortgage lending statutes.

The bill specifies that the residential mortgage fraud is considered to be committed:

1. in the county in which the residential real property for which the mortgage loan is being sought is located;
2. in the county in which any act was performed in furtherance of residential mortgage fraud;

3. in any county in which any person alleged to have engaged in an act that constitutes residential mortgage fraud had control or possession of any proceeds of the fraud;
4. in any county in which the closing occurred, if a closing occurred; or
5. in any county in which a document containing a deliberate misstatement, misrepresentation or omission is filed with an official registrar.

***Standard of Proof***

The bill provides that, in a prosecution for residential mortgage fraud, it is sufficient to show that the party accused did the act with the intent to deceive or defraud. The bill specifies that it is unnecessary to show that any particular person was harmed financially in the transaction or that the person to whom the deliberate misstatement, misrepresentation or omission was made relied on it.

***Penalties and Whistleblower Protection***

In order to secure a fine levied against a person convicted of residential mortgage fraud, the bill subjects to a judgment lien in favor of the state all real and personal property of every kind used or intended for use in the course of, derived from, or realized through, the act. The lien must comply with the statutes governing postjudgment procedures and must be subordinate to any security interest in the property recorded prior to the date the lien is recorded.

Additionally, the bill allows courts to order restitution to any person who has suffered a financial loss due to any act or acts constituting residential mortgage fraud.

The bill protects from civil liability a person who has furnished information regarding suspected residential mortgage fraud to a regulatory or law enforcement agency, as long as there is no fraud, bad faith or malice.

**§§ 3 & 4 — NONPRIME LOANS*****Definition***

Under current law, loans must meet two interest rate provisions in order to meet the definition of nonprime. The bill changes only the one that specifies that nonprime loans are those where the difference between the annual percentage rate (APR) for the loan or extension of credit and the yield on United States Treasury securities having comparable periods of maturity is either 3% or more on first mortgage loans or 5% or more on second mortgage loans.

The bill instead specifies that nonprime loans are those where the difference between the APR for the loan or extension of credit and the average prime offer rate for a comparable transaction, as of the date disclosed by the lender as the date the interest rate was set, is greater than 1.5% if the loan is a first mortgage loan or 3.5% if the loan is a secondary mortgage loan. The bill provides that average prime offer rate has the same meaning as it does in the federal Truth in Lending regulations.

Unchanged by the bill, nonprime loans are also those where the difference between the APR for the loan and the conventional mortgage rate is either equal to or greater than 1.75% if the loan is a first mortgage or 3.75% if it is a second mortgage. The law specifies that the conventional mortgage rate is the most recent daily contract interest rate on commitments for fixed-rate mortgages published by the Board of Governors of the Federal Reserve System in its statistical release H. 15, or any publication that may supersede it, during the week in which the interest rate for the loan is set (the bill changes this to the week before the loan's interest rate is set).

Although the law sets interest rate parameters for identifying nonprime loans, it allows the banking commissioner to increase them after considering relevant factors. The bill allows the commissioner to do this only for the provision that uses the difference between the APR and the conventional mortgage rate. Under current law, the commissioner's authority and any increases or decreases he makes

under this authority, expires on August 31, 2009. The bill extends this authority to August 31, 2010. (The law does not specifically authorize him to make decreases). The bill eliminates the restriction that the total of all increases the commissioner authorizes to a particular percentage cannot exceed .5%.

***Provisions Prohibited in a Nonprime Loan***

The bill expands the list of provisions that are prohibited in nonprime laws to include:

1. for a loan with a term of less than seven years, a payment schedule with regular periodic payments that when aggregated does not fully amortize the outstanding principal balance, except that this limitation does not apply to loans with maturities of less than one year if the loan's purpose is a bridge loan, as defined in federal regulation, connected with the acquisition or construction of a dwelling intended to become the borrower's principal dwelling;
2. a payment schedule with regular periodic payments that cause the principal balance to increase;
3. a payment schedule that consolidates more than two periodic payments and pays them in advance from the proceeds, unless such payments are required to be escrowed by a governmental agency;
4. default charges in excess of five percent of the amount in default;  
or
5. a call provision that permits the lender, in its sole discretion, to accelerate the indebtedness. This prohibition does not apply when repayment of the loan is accelerated by bona fide default pursuant to a due-on-sale clause provision or pursuant to another provision of the loan agreement unrelated to the payment schedule.

As under current law, if a nonprime loan contains any of these provisions, they are void and unenforceable.

#### **§ 5 — ABANDONED APPLICATIONS FROM MORTGAGE PROFESSIONALS**

The bill allows the commissioner to deem an application for a license as a mortgage lender, mortgage correspondent lender, mortgage broker, or mortgage loan originator abandoned if the applicant fails to respond to any request for information under the mortgage licensing statutes. Before doing this, the bill requires the commissioner to notify the applicant in writing that the application is deemed abandoned if the information is not submitted within 60 days. The bill allows the banking department to keep the application fee for abandoned applications, but provides that abandonment does not preclude the applicant from submitting a new application.

#### **§§ 4, 6 & 8 — PROHIBITION AGAINST INCREASING INTEREST RATE AFTER DEFAULT**

By law, a high-cost home loan cannot provide for an increase in the interest rate after default or default charges in excess of 5% of the amount in default. Similarly, nonprime loans cannot have a provision that increases the interest rate after default. The bill eliminates these requirements and instead prohibits in all loans, a provision that increases the interest rate after default.

The bill maintains for all loans, current law's nonprime loan exception for an increase for a failure to comply with a provision to maintain an automatic electronic payment feature if the maintenance provision was provided in return for an interest rate reduction and the increase is no greater than the reduction.

#### **COMMITTEE ACTION**

Banks Committee

Joint Favorable Substitute

Yea 16 Nay 0 (03/10/2009)